



In proceedings under the Workers Compensation Act, the burden of proof shall be on the claimant to establish the claimant's right to an award of compensation by proving the various conditions on which the claimant's right depends. K.S.A. 44-501(a).

The burden of proof is upon the claimant to establish his right to an award for compensation by proving all the various conditions on which his right to a recovery depends. This must be established by a preponderance of the credible evidence. Box v. Cessna Aircraft Co., 236 Kan. 237, 689 P.2d 871 (1984).

Claimant does provide evidence through Mr. Dave Evans and Mr. Ernest Rhodes, current or past employees of respondent Collins Bus Corporation, that the claimant complained of lumbosacral back problems while working for the respondent. Mr. Evans indicated that claimant advised him he had hurt his back one Saturday while putting in a floor, but he did not remember the date of the alleged incident. Mr. Rhodes testified that claimant had come to his house in Newton, Kansas to obtain Tylenol for his back pain. He also could not testify as to the date. Mr. Jeff Hurst, a primary supervisor with the respondent, denied claimant advised him of a work-related injury and further advised claimant did not report the incident to the safety representative so that appropriate documentation could be prepared. Both Mr. Robert Johnson and Mr. Tom Logue, current company employees, reported that claimant had told them he had injured himself while playing basketball.

Whether an accidental injury arises out of and in the course of the worker's employment depends upon the facts peculiar to the particular case. Messenger v. Sage Drilling Co., 9 Kan. App. 2d 435, 680 P.2d 556 (1984).

It is the function of the trier of fact to decide which testimony is more accurate and/or credible and to adjust the medical testimony along with the testimony of the claimant and any other testimony that may be relevant to the question of disability. Tovar v. IBP, Inc., 15 Kan. App. 2d 782, 817 P.2d 212, rev. denied 249 Kan. 778 (1991).

The evidence in the record both supports and contradicts claimant's allegations of a work-related injury. The more compelling evidence appears to come from the medical records of Dr. Niernberger which indicate claimant did not initially advise of a work-related injury but rather of a three and one-half month history of back problems. Medical evidence also indicated claimant had long-term back problems and had missed work in years past while being treated for his ongoing back difficulties.

The Appeals Board finds that claimant's allegations of an accidental injury arising out of and in the course of his employment with the respondent are not supported by a preponderance of the credible evidence and claimant's request for benefits from Collins Bus Corporation must be denied.

**WHEREFORE**, it is the finding, decision, and order of the Appeals Board that the Order of Administrative Law Judge George R. Robertson, dated September 27, 1994, is affirmed in all respects.

**IT IS SO ORDERED.**

Dated this \_\_\_\_ day of November, 1994.

---

BOARD MEMBER

---

BOARD MEMBER

---

BOARD MEMBER

c: Dwight A. Corrin, Wichita, Kansas  
John F. Hayes, Hutchinson, Kansas  
George R. Robertson, Administrative Law Judge  
George Gomez, Director